

AIR COMMERCE ACT OF 1926

MAY 11, 1926.—Ordered to be printed

Mr. PARKER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 41]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 41) to encourage and regulate the use of aircraft in commerce, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That as used in this Act, the term "air commerce" means transportation in whole or in part by aircraft of persons or property for hire, navigation of aircraft in furtherance of a business, or navigation of aircraft from one place to another for operation in the conduct of a business. As used in this Act, the term "interstate or foreign air commerce" means air commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through the airspace over any place outside thereof; or wholly within the airspace over any Territory or possession or the District of Columbia.

Sec. 2. Promotion of air commerce.—It shall be the duty of the Secretary of Commerce to foster air commerce in accordance with the provisions of this Act, and for such purpose—

(a) To encourage the establishment of airports, civil airways, and other air navigation facilities.

(b) To make recommendations to the Secretary of Agriculture as to necessary meteorological service.

(c) To study the possibilities for the development of air commerce and the aeronautical industry and trade in the United States and to

collect and disseminate information relative thereto and also as regards the existing state of the art.

(d) To advise with the Bureau of Standards and other agencies in the executive branch of the Government in carrying forward such research and development work as tends to create improved air navigation facilities. The Secretary of Commerce is authorized to transfer funds available for carrying out the purposes of this subdivision to any such agency for carrying forward such research and development work in cooperation with the Department of Commerce.

(e) To investigate, record, and make public the causes of accidents in civil air navigation in the United States.

(f) To exchange with foreign governments through existing governmental channels information pertaining to civil air navigation.

Sec. 3. Regulatory powers.—The Secretary of Commerce shall by regulation—

(a) Provide for the granting of registration to aircraft eligible for registration, if the owner requests such registration. No aircraft shall be eligible for registration (1) unless it is a civil aircraft owned by a citizen of the United States and not registered under the laws of any foreign country, or (2) unless it is a public aircraft of the Federal Government, or of a State, Territory, or possession, or of a political subdivision thereof. All aircraft registered under this subdivision shall be known as aircraft of the United States.

(b) Provide for the rating of aircraft of the United States as to their airworthiness. As a basis for rating, the Secretary of Commerce (1) may require, before the granting of registration for any aircraft first applying therefor more than eight months after the passage of this Act, full particulars of the design and of the calculations upon which the design is based and of the materials and methods used in the construction; and (2) may in his discretion accept in whole or in part the reports of properly qualified persons employed by the manufacturers or owners of aircraft; and (3) may require the periodic examination of aircraft in service and reports upon such examination by officers or employees of the Department of Commerce or by properly qualified private persons. The Secretary may accept any such examination and report by such qualified persons in lieu of examination by the employees of the Department of Commerce. The qualifications of any person for the purposes of this section shall be demonstrated in a manner specified by and satisfactory to the Secretary. The Secretary may, from time to time, re-rate aircraft as to their airworthiness upon the basis of information obtained under this subdivision.

(c) Provide for the periodic examination and rating of airmen serving in connection with aircraft of the United States as to their qualifications for such service.

(d) Provide for the examination and rating of air navigation facilities available for the use of aircraft of the United States as to their suitability for such use.

(e) Establish air traffic rules for the navigation, protection, and identification of aircraft, including rules as to safe altitudes of flight and rules for the prevention of collisions between vessels and aircraft.

(f) Provide for the issuance and expiration, and for the suspension and revocation, of registration, aircraft, and airman certificates, and such other certificates as the Secretary of Commerce deems necessary in administering the functions vested in him under this act. Within

20 days after notice that application for any certificate is denied or that a certificate is suspended or revoked, the applicant or holder may file a written request with the Secretary of Commerce for a public hearing thereon. The Secretary upon receipt of the request shall forthwith (1) arrange for a public hearing to be held within 20 days after such receipt in such place as the Secretary deems most practicable and convenient in view of the place of residence of the applicant or holder and the place where evidence bearing on the cause for the denial, suspension, or revocation is most readily obtainable, and (2) give the applicant or holder at least ten days' notice of the hearing, unless an earlier hearing is consented to by him. Notice under this subdivision may be served personally upon the applicant or holder or sent him by registered mail. The Secretary, or any officer or employee of the Department of Commerce designated by him in writing for the purpose, may hold any such hearing and for the purposes thereof administer oaths, examine witnesses, and issue subpoenas for the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths. Witnesses summoned or whose depositions are taken shall receive the same fees and mileage as witnesses in courts of the United States. All evidence taken at the hearing shall be recorded and forwarded to the Secretary for decision in the matter to be rendered not later than ten days after completion of the hearing. The decision of the Secretary, if in accordance with law, shall be final. The denial, suspension, or revocation shall be invalid unless opportunity for hearing is afforded, notice served or sent, and decision rendered within the respective times prescribed by this subdivision.

Sec. 4. *Airspace reservations.*—The President is authorized to provide by Executive order for the setting apart and the protection of airspace reservations in the United States for national defense or other governmental purposes and, in addition, in the District of Columbia for public safety purposes. The several States may set apart and provide for the protection of necessary airspace reservations in addition to and not in conflict either with airspace reservations established by the President under this section or with any civil or military airway designated under the provisions of this act.

Sec. 5. *Aids to air navigation.*—(a) Whenever at any time the Postmaster General and the Secretary of Commerce by joint order so direct, the airways under the jurisdiction and control of the Postmaster General, together with all emergency landing fields and other air navigation facilities (except airports and terminal landing fields) used in connection therewith, shall be transferred to the jurisdiction and control of the Secretary of Commerce, and the established airports and terminal landing fields may be transferred to the jurisdiction and control of the municipalities concerned under arrangements subject to approval by the President. All unexpended balances of appropriations which are available for and which have been allotted for expenditure upon such airways, emergency landing fields, and other air navigation facilities, except airports and terminal-landing fields, shall thereupon be available for expenditure under the direction of the Secretary of Commerce, in lieu of the Postmaster General, for the purposes for which such appropriations were made. No part of such unexpended balances of appropriations shall be used for the purchase or establishment of airports or terminal landing fields.

(b) The Secretary of Commerce is authorized to designate and establish civil airways and, within the limits of available appropriations hereafter made by the Congress, (1) to establish, operate, and maintain along such airways all necessary air navigation facilities except airports; and (2) to chart such airways and arrange for publication of maps of such airways, utilizing the facilities and assistance of existing agencies of the Government so far as practicable. The Secretary of Commerce shall grant no exclusive right for the use of any civil airway, airport, emergency landing field, or other air navigation facility under his jurisdiction.

(c) Air navigation facilities owned or operated by the United States may be made available for public use under such conditions and to such extent as the head of the department or other independent establishment having jurisdiction thereof deems advisable and may by regulation prescribe.

(d) The head of any Government department or other independent establishment having jurisdiction over any airport or emergency landing field owned or operated by the United States may provide for the sale to any aircraft of fuel, oil, equipment, and supplies, and the furnishing to it of mechanical service, temporary shelter, and other assistance under such regulations as the head of the department or establishment may prescribe, but only if such action is by reason of an emergency necessary to the continuance of such aircraft on its course to the nearest airport operated by private enterprise. All such articles shall be sold and such assistance furnished at the fair market value prevailing locally as ascertained by the head of such department or establishment. All amounts received under this subdivision shall be covered into the Treasury; but that part of such amounts which, in the judgment of the head of the department or establishment, is equivalent to the cost of the fuel, oil, equipment, supplies, services, shelter, or other assistance so sold or furnished shall be credited to the appropriation from which such cost was paid, and the balance, if any, shall be credited to miscellaneous receipts.

(e) Section 3 of the Act entitled "An Act to increase the efficiency and reduce the expense of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture," approved October 1, 1890, is amended by adding at the end thereof a new paragraph to read as follows:

"Within the limits of the appropriations which may be made for such purpose, it shall be the duty of the Chief of the Weather Bureau, under the direction of the Secretary of Agriculture, (a) to furnish such weather reports, forecasts, warnings, and advices as may be required to promote the safety and efficiency of air navigation in the United States and above the high seas, particularly upon civil airways designated by the Secretary of Commerce under authority of law as routes suitable for air commerce, and (b) for such purposes to observe, measure, and investigate atmospheric phenomena, and establish meteorological offices and stations."

(f) Nothing in this Act shall be construed to prevent the Secretary of War from designating routes in the navigable airspace as military airways and prescribing rules and regulations for the use thereof on routes which do not conform to civil airways established hereunder, or to prevent the Secretary of Commerce from designating any military airway as a civil airway, and when so designated it shall thereupon become a civil airway within the meaning of this Act, and the Secretary of War is

hereby authorized to continue the operation of air navigation facilities for any military airway so designated as a civil airway until such time as the Secretary of Commerce can provide for the operation of such facilities.

Sec. 6. Foreign aircraft.—(a) The Congress hereby declares that the Government of the United States has, to the exclusion of all foreign nations, complete sovereignty of the airspace over the lands and waters of the United States, including the Canal Zone. Aircraft a part of the armed forces of any foreign nation shall not be navigated in the United States, including the Canal Zone, except in accordance with an authorization granted by the Secretary of State.

(b) Foreign aircraft not a part of the armed forces of the foreign nation shall be navigated in the United States only if authorized as hereinafter in this section provided; and if so authorized, such aircraft and airmen serving in connection therewith shall be subject to the requirements of section 3, unless exempt under subdivision (c) of this section.

(c) If a foreign nation grants a similar privilege in respect of aircraft of the United States, and/or airmen serving in connection therewith, the Secretary of Commerce may authorize aircraft registered under the law of the foreign nation and not a part of the armed forces thereof to be navigated in the United States, and may by regulation exempt such aircraft, and/or airmen serving in connection therewith, from the requirements of section 3, other than the air traffic rules; but no foreign aircraft shall engage in interstate or intrastate air commerce.

Sec. 7. Application of existing laws relating to foreign commerce.—

(a) The navigation and shipping laws of the United States, including any definition of "vessel" or "vehicle" found therein and including the rules for the prevention of collisions, shall not be construed to apply to seaplanes or other aircraft or to the navigation of vessels in relation to seaplanes or other aircraft.

(b) The Secretary of the Treasury is authorized to (1) designate places in the United States as ports of entry for civil aircraft arriving in the United States from any place outside thereof and for merchandise carried on such aircraft, (2) detail to ports of entry for civil aircraft such officers and employees of the customs service as he may deem necessary, and to confer or impose upon any officer or employee of the United States stationed at any such port of entry (with the consent of the head of the Government department or other independent establishment under whose jurisdiction the officer or employee is serving) any of the powers, privileges, or duties conferred or imposed upon officers or employees of the customs service, and (3) by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of the customs and public health laws to such extent and upon such conditions as he deems necessary.

(c) The Secretary of Commerce is authorized by regulation to provide for the application to civil aircraft of the laws and regulations relating to the entry and clearance of vessels to such extent and upon such conditions as he deems necessary.

(d) The Secretary of Labor is authorized to (1) designate any of the ports of entry for civil aircraft as ports of entry for aliens arriving by aircraft, (2) detail to such ports of entry such officers and employees of the Immigration Service as he may deem necessary, and to confer or impose upon any employee of the United States stationed at such port of entry (with the consent of the head of the Government department or

other independent establishment under whose jurisdiction the officer or employee is serving) any of the powers, privileges, or duties conferred or imposed upon officers or employees of the Immigration Service, and (3) by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of the immigration laws to such extent and upon such conditions as he deems necessary.

Sec. 8. Additional Assistant Secretary of Commerce.—To aid the Secretary of Commerce in fostering air commerce and to perform such functions vested in the Secretary under this Act as the Secretary may designate, there shall be an additional Assistant Secretary of Commerce, who shall be appointed by the President, by and with the advice and consent of the Senate and whose compensation shall be fixed in accordance with the Classification Act of 1923. Except as otherwise specifically provided, the Secretary of Commerce shall administer the provisions of this Act and for such purpose is authorized (1) to make such regulations as are necessary to execute the functions vested in him by this Act; (2) to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere and for law books, books of reference, and periodicals) as may be necessary for such administration and as may be provided for by the Congress from time to time; (3) to publish from time to time a bulletin setting forth such matters relating to the functions vested in him by this Act as he deems advisable, including air navigation treaties, laws, and regulations and decisions thereunder; and (4) to operate, and for this purpose to acquire within the limits of the available appropriations hereafter made by the Congress, such aircraft and air navigation facilities, except airports, as are necessary for executing the functions vested in the Secretary of Commerce by this Act.

Sec. 9. Definitions.—As used in this Act—

(a) The term "citizen of the United States" means (1) an individual who is a citizen of the United States or its possessions, or (2) a partnership of which each member is an individual who is a citizen of the United States or its possessions, or (3) a corporation or association created or organized in the United States or under the law of the United States or of any State, Territory, or possession thereof, of which the president and two-thirds or more of the board of directors or other managing officers thereof, as the case may be, are individuals who are citizens of the United States or its possessions and in which at least 51 per centum of the voting interest is controlled by persons who are citizens of the United States or its possessions.

(b) The term "United States," when used in a geographical sense, means the territory comprising the several States, Territories, possessions, and the District of Columbia (including the territorial waters thereof), and the overlying airspace; but shall not include the Canal Zone.

(c) The term "aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment.

(d) The term "public aircraft" means an aircraft used exclusively in the governmental service.

(e) The term "civil aircraft" means any aircraft other than a public aircraft.

(f) The term "aircraft of the United States" means any aircraft registered under this Act.

(g) The term "airport" means any locality, either of water or land, which is adapted for the landing and taking off of aircraft and which provides facilities for shelter, supply, and repair of aircraft; or a place used regularly for receiving or discharging passengers or cargo by air.

(h) The term "emergency landing field" means any locality, either of water or land, which is adapted for the landing and taking off of aircraft, is located along an airway, and is intermediate to airports connected by the airway, but which is not equipped with facilities for shelter, supply, and repair of aircraft and is not used regularly for the receipt or discharge of passengers or cargo by air.

(i) The term "air navigation facility" includes any airport, emergency landing field, light or other signal structure, radio directional finding facility, radio or other electrical communication facility, and any other structure or facility, used as an aid to air navigation.

(j) The term "civil airway" means a route in the navigable airspace designated by the Secretary of Commerce as a route suitable for interstate or foreign air commerce.

(k) The term "airman" means any individual (including the person in command and any pilot, mechanic, or member of the crew) who engages in the navigation of aircraft while under way, and any individual who is in charge of the inspection, overhauling, or repairing of aircraft.

Sec. 10. Navigable airspace.—As used in this Act, the term "navigable airspace" means airspace above the minimum safe altitudes of flight prescribed by the Secretary of Commerce under section 3, and such navigable airspace shall be subject to a public right of freedom of interstate and foreign air navigation in conformity with the requirements of this Act.

Sec. 11. Penalties.—(a) It shall be unlawful, except to the extent authorized or exempt under section 6—

(1) To navigate any aircraft within any airspace reservation otherwise than in conformity with the Executive orders regulating such reservation.

(2) To navigate any aircraft (other than a foreign aircraft) in interstate or foreign air commerce unless such aircraft is registered as an aircraft of the United States; or to navigate any foreign aircraft in the United States.

(3) To navigate any aircraft registered as an aircraft of the United States, or any foreign aircraft, without an aircraft certificate or in violation of the terms of any such certificate.

(4) To serve as an airman in connection with any aircraft registered as an aircraft of the United States, or any foreign aircraft, without an airman certificate or in violation of the terms of any such certificate.

(5) To navigate any aircraft otherwise than in conformity with the air traffic rules.

(b) Any person who (1) violates any provision of subdivision (a) of this section or any entry or clearance regulation made under section 7, or (2) any customs or public health regulation made under such section, or (3) any immigration regulation made under such section, shall be subject to a civil penalty of \$500 which may be remitted or mitigated by the Secretary of Commerce, the Secretary of the Treasury, or the Secretary of Labor, respectively, in accordance with such proceedings as the Secretary shall by regulation prescribe. In case the violation is by the owner or person in command of the aircraft, the penalty shall be a lien against the

aircraft. Any civil penalty imposed under this section may be collected by proceedings in personam against the person subject to the penalty and/or in case the penalty is a lien by proceedings in rem against the aircraft. Such proceedings shall conform as nearly as may be to civil suits in admiralty; except that either party may demand trial by jury of any issue of fact if the value in controversy exceeds \$20, and facts so tried shall not be reexamined other than in accordance with the rules of the common law. The fact that in a libel in rem the seizure is made at a place not upon the high seas or navigable waters of the United States, shall not be held in any way to limit the requirement of the conformity of the proceedings to civil suits in rem in admiralty. The Supreme Court of the United States, and under its direction other courts of the United States, are authorized to prescribe rules regulating such proceedings in any particular not provided by law. The determination under this section as to the remission or mitigation of a civil penalty imposed under this section shall be final. In case libel proceedings are pending at any time during the pendency of remission or mitigation proceedings, the Secretary shall give notice thereof to the United States attorney prosecuting the libel proceedings.

(c) Any aircraft subject to a lien for any civil penalty imposed under this section may be summarily seized by and placed in the custody of such persons as the appropriate Secretary may by regulation prescribe and a report of the case thereupon transmitted to the United States attorney for the judicial district in which the seizure is made. The United States attorney shall promptly institute proceedings for the enforcement of the lien or notify the Secretary of his failure so to act. The aircraft shall be released from such custody upon (1) payment of the penalty or so much thereof as is not remitted or mitigated, (2) seizure in pursuance of process of any court in proceedings in rem for enforcement of the lien, or notification by the United States attorney of failure to institute such proceedings, or (3) deposit of a bond in such amount and with such sureties as the Secretary may prescribe, conditioned upon the payment of the penalty or so much thereof as is not remitted or mitigated.

(d) Any person who fraudulently forges, counterfeits, alters, or falsely makes any certificate authorized to be issued under this Act, or knowingly uses or attempts to use any such fraudulent certificate shall be guilty of an offense punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding three years, or by both such fine and imprisonment.

(e) Any person (1) who, with intent to interfere with air navigation in the navigable airspace or waters of the United States, exhibits within the United States any false light or signal at such place or in such manner that it is likely to be mistaken for a true light or signal required by regulation under this Act, or for a true light or signal in connection with an airport or other air navigation facility, or (2) who, after due warning from the Secretary of Commerce, continues to maintain any false light or signal, or (3) who knowingly removes, extinguishes, or interferes with the operation of any such true light or signal, or (4) who without lawful authority knowingly exhibits any such true light or signal, shall be guilty of an offense punishable by a fine not exceeding \$5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

(f) All penalties paid under this Act, shall be covered into the Treasury as miscellaneous receipts.

Sec. 12. Separability.—If any provision of this Act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

Sec. 13. Time of taking effect.—This Act shall take effect upon its passage; except that no penalty shall be enforced for any violation thereof occurring within 90 days thereafter.

Sec. 14. Short title.—This Act may be cited as the "Air Commerce Act of 1926."

And the House agree to the same.

JAMES S. PARKER,
JOHN G. COOPER,
SCHUYLER MERRITT,
SAM RAYBURN,
CLARENCE F. LEA,

Managers on the part of the House.

WESLEY L. JONES,
BERT M. FERNALD
HIRAM BINGHAM,
DUNCAN U. FLETCHER,
JOSEPH E. RANSELL,

Managers on the part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (S. 41) to encourage and regulate the use of aircraft in commerce, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause. The Senate receded from its disagreement to the amendment of the House with an amendment which is a substitute for both the Senate bill and the House amendment.

The essential differences between the Senate bill and the House amendment may be enumerated as follows:

1. *Registration.*—The Senate bill restricted compulsory registration to aircraft engaging in interstate and foreign commerce whether or not in the navigable airspace. The House amendment covered all air navigation in the navigable airspace, whether in interstate or intrastate commerce, and whether commercial or noncommercial. The substitute requires the registration of aircraft engaged in the following classes of commercial air navigation:

(a) The transportation in interstate or foreign commerce of persons or property for hire, either in whole or in part by aircraft, whether or not the air portion of the transportation is interstate or foreign or is intrastate. The transportation of property for hire includes the transportation of the mails by aircraft.

(b) The interstate and foreign navigation of aircraft in furtherance of a business, as, for instance, the transportation of factory products from the main plant to a branch office, or the use of aircraft by salesmen or insurance agents or professional men while traveling upon business. The clause, of course, would not cover the use of aircraft for the purpose of transportation from home to office. The clause would have no unreasonably restrictive application to flights for scientific or experimental purposes in furtherance of a business, for the reason that such flights would not ordinarily be interstate or foreign, but would be conducted wholly within the limits of one State.

(c) The interstate or foreign navigation of aircraft from one place to another in the operation or conduct of a business. This clause would cover the gypsy flyer and the exhibitor at county fairs if he navigated his aircraft from a place of exhibition in one State to a place of exhibition in another State, or from a place in one State where he conducts intrastate transportation for hire to a place in another State where he conducts intrastate transportation for hire.

Under both the Senate bill and the House amendment aircraft were eligible for registration only if owned by citizens of the United States. Under the Senate bill a corporation was deemed to be a citizen if two-thirds of the stock, whether voting or nonvoting, was owned by United States citizens. The House amendment provided for such registration in case of a corporation if 51 per cent of the voting

stock is controlled by citizens of the United States. The substitute requires 51 per cent of the voting stock to be controlled by citizens of the United States.

Under both the Senate bill and House amendment aircraft eligible for registration could obtain registration even though not required to do so by the penalty provisions. The substitute retains this provision, together with the requirement that any aircraft obtaining registration, whether or not required to register, must conform to the regulations as to airworthiness and as to the certification of its airmen.

2. *Rating of aircraft.*—The Senate bill provides for the inspection of each aircraft before it is used in interstate or foreign commerce and the certification of its condition, capacity, and safety at the date of inspection. Further, from time to time thereafter the Secretary of Commerce is authorized to inspect and test the aircraft as to its airworthiness. The House amendment authorized the Secretary of Commerce to provide for the examination and rating upon registration and periodically thereafter of registered aircraft as to their airworthiness. The House amendment would not require the examination to be made by officers of the Government. The substitute requires the Secretary to provide for the examination and rating of registered aircraft as to their airworthiness. It further provides specifically that the Secretary may require periodic examinations to be made of aircraft in service and reports thereon either by officers or employees of the Department of Commerce or by properly qualified private persons. In addition, the Secretary may, in his discretion, accept as a basis for rating the reports of properly qualified persons employed by manufacturers or owners of aircraft, and after the first eight months after the passage of the act, may deny registration to any aircraft applying therefor unless full particulars of the design and the calculations upon which the design is based and the materials and methods used in the construction are furnished him. The Secretary may, from time to time, rerate aircraft upon the basis of the above information.

3. *Rating of airmen.*—The Senate bill authorized the Secretary of Commerce to examine and determine the qualifications of individuals to serve as airmen upon or in connection with any aircraft in the United States. The House amendment provided for the periodic examination of any airman serving upon or in connection with registered aircraft. The substitute adopts the provision of the House amendment.

4. *Rating of air navigation facilities.*—The House amendment provided for the periodic examination and rating of air navigation facilities. The Senate bill contained no such provision. The substitute adopts the House provision except that such examination and rating need not be periodic.

5. *Air traffic rules.*—The Senate bill provided the Secretary should establish aerial traffic rules for the manner of navigating and operating civil aircraft in interstate or foreign commerce. The House amendment provided that the Secretary of Commerce shall by regulation establish air traffic rules for the navigation and protection of aircraft in the navigable air space or waters of the United States, including rules for taking off and alighting, signal rules for land and water structures, rules for safe altitudes for flight, rules for identification

and marking, rules for maintenance of log books, and rules for prevention of collisions between vessels and aircraft.

The substitute provides that the Secretary shall by regulation establish air traffic rules for the navigation, protection, and identification of all aircraft, including rules as to safe altitudes of flight and rules for the prevention of collisions between vessels and aircraft. The provision as to rules for taking off and alighting, for instance, was eliminated as unnecessary specification, for the reason that such rules are but one class of air traffic rules for the navigation and protection of aircraft. Rules as to marking were eliminated for the reason that such rules were fairly included within the scope of air rules for the identification of aircraft. No attempt is made by either the Senate bill or the House amendment to fully define the various classes of rules that would fall within the scope of air traffic rules, as, for instance, lights and signals along airways and at air-ports and upon emergency landing fields. In general, these rules would relate to the same subjects as those covered by navigation laws and regulations and by the various State motor vehicle traffic codes. As noted above, surplusage was eliminated in specifying particular air traffic rules in order that the term might be given the broadest possible construction by the Department of Commerce and the courts.

In order to protect and prevent undue burdens upon interstate and foreign air commerce the air traffic rules are to apply whether the aircraft is engaged in commercial or noncommercial, or in foreign, interstate, or intrastate navigation in the United States, and whether or not the aircraft is registered or is navigating in a civil airway.

6. *Public aircraft.*—Under the Senate bill public aircraft were exempt from all the regulatory interstate and foreign commerce requirements of the act. Under the House amendment public aircraft were exempt in respect of all navigation from the requirements as to airworthiness and the rating of airmen, but not from air traffic rules upon civil airways nor from registration. Under the substitute public aircraft of the Federal Government are exempt from the airworthiness requirements and the regulations as to the rating of airmen, unless such aircraft are voluntarily registered; but public aircraft of the Federal Government are not exempt from the air traffic rules, except in so far as the Secretary of War has control over exclusively military aircraft upon military airways.

7. *Foreign aircraft.*—Under the Senate bill foreign aircraft were subject to all the regulatory provisions as to foreign commerce and could not engage in interstate nor apparently in foreign commerce in the United States. Under the House amendment foreign aircraft could be exempt from any of the regulatory provisions governing foreign, interstate, and intrastate air navigation if the foreign nation granted a similar exemption, but could not engage in interstate commerce in any case. Under the substitute foreign aircraft can not engage in interstate or intrastate commerce, but can engage in all other air navigation, foreign, interstate, or intrastate, if permitted by the Secretary of Commerce and if the foreign nation grants a similar exemption. While engaged in such other air navigation, foreign aircraft may, to such extent as the Secretary deems advisable, be exempt from the requirements as to airworthiness and rating of airmen, but not from the air traffic rules.

8. *Aids to air navigation.*—The Senate bill provided for (a) the establishment and operation by the Secretary of Commerce, within the limits of appropriations made by Congress, of aerial lights, lighthouses, and signal stations, radio directional finding facilities, and radio communication facilities, whether along air routes or at airports or emergency landing fields or elsewhere; (b) the charting of commercial air routes and the publication of maps of such routes; (c) the making available to the public the use of the airports, aerial lights, and lighthouses, and signal stations, radio directional finding facilities, and radio communication facilities of any Government department, under such conditions and to such extent as the head of the department deemed advisable and by regulation prescribed; (d) the sale in emergencies at Government airports of fuel, oil, equipment, and the furnishing in emergencies of supplies and other assistance, at the local fair market value; (e) the furnishing exclusively by the Weather Bureau of meteorological information to promote the safety and efficiency of air navigation particularly along civil airways. The House amendment retained all of the above features except that air navigation facilities could be established along airways only, i. e., at airports, emergency landing fields, and intermediate points. The House amendment provided also for the establishing and operation along airways of airports, emergency landing fields, and electrical communication facilities, and for the transfer to the Secretary of Commerce by joint action of the Postmaster General and the Secretary of Commerce of the airports, emergency landing fields, and other air navigation facilities of the air mail service. The substitute retains the features of both the Senate bill and the House amendment, except that the Secretary of Commerce may not establish or operate airports, and that the transfer of the air mail service airports may be made only to municipalities and then only under arrangements subject to the approval of the President. The airports of the air mail service are referred to in section 5 (a) as airports or terminal landing fields.

9. *Penalties.*—The Senate bill provided for the enforcement of the provisions of the act and regulations thereunder through a system of flat civil penalties and liens subject to administrative mitigation and remission, similar to the penalties by which the customs and navigation laws are enforced. The House amendment provided for enforcement through Federal criminal penalties and also authorized the several States to provide for the prosecution of the Federal offenses occurring within their respective jurisdiction and to prescribe penalties or forfeitures, civil or criminal, to be imposed for such offenses. Trial and acquittal or conviction of any person under such State law was to constitute a bar to his trial and conviction by the Federal Government for the offense. The substitute retains the Senate provision but with such additional administrative machinery as will make the provision effective. It also provides the constitutional basis necessary for enforcement of liens and penalties against aircraft by simulated admiralty proceedings.

10. *Advisory Committee for Aeronautics.*—The House bill provided for increasing the membership of the Advisory Committee for Aeronautics by additional members, one each from the office of the Assistant Secretary of Commerce in charge of civil air navigation,

the office of the Postmaster General in charge of the air mail service, and the Coast Guard. The Senate bill contained no such provision and the substitute omits it.

11. *Navigable airspace.*—The House bill provides a public right of freedom of interstate and foreign air navigation in the navigable airspace similar to the public right of such navigation upon navigable waters. Such navigable airspace comprises the airspace above the minimum safe altitudes of flight prescribed by the Secretary of Commerce. These altitudes would vary with the terrene and location of cities and would coincide with the surface of the land or water at airports. The power to fix the various altitudes was, therefore, left to the discretion of the Secretary of Commerce, having regard to the above mentioned and other relevant factors. The Senate bill contained no such section, but the provisions of the House amendment are retained by the substitute.

12. *Assistant Secretary of Commerce.*—The Senate bill provided for an Assistant Secretary of Commerce to be appointed by the President and the Senate and to receive a salary of \$7,500 a year. The House amendment retained this provision, making it clear that the new office of the Assistant Secretary is in addition to that now provided by law, and that the functions of the new Assistant Secretary are confined to civil air navigation, but providing for the fixing of his compensation in accordance with the classification act of 1923. The substitute retains substantially the House provision.

13. *Airspace reservation.*—The House amendment provided for the establishment and protection of airspace reservations for national defense and other governmental purposes and, in addition, in the District of Columbia for public safety purposes. No similar provision was included in the Senate bill. The substitute retains the House provision, and all air navigation within any airspace reservation is subject to the restrictions imposed by the Executive order relating to such reservations.

14. *Issuance, suspension, and revocation of certificates.*—Both the Senate bill and the House amendment provided for the issuance, suspension, and revocation of certificates in enforcing the act. In the Senate bill the procedure was left to regulation by the Secretary of Commerce. The House amendment, for the more adequate protection of the individual, provided for proper notice and hearing and opportunity for review, by extraordinary remedy, of the decision of the Secretary upon questions of law, as, for example, the unconstitutionality of the substantive law applied or the procedure used, failure to observe the procedure required by law, the proper application of the statute or any regulation having the force of law, and the existence of at least some evidence to support the findings of fact. The substitute retains the provisions of the House amendment.

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Managers on the part of the House.